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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/015,314	12/11/2001	David Allen Loewenstein	FERN-P008	2903

7590 05/06/2003

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EXAMINER

RADA, ALEX P

ART UNIT	PAPER NUMBER
3714	12

DATE MAILED: 05/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/015,314	LOEWENSTEIN, DAVID ALLEN
	Examiner Alex P. Rada	Art Unit 3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 24 February 2003.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-22 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-22 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____.

2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 11. 6) Other: _____.

DETAILED ACTION

Response to Amendment

In response to the amendment filed February 24, 2003, in which the applicant has amended claims 1 and 10, adds new claims 20-22, and claims 1-22 are pending in this office action.

Double Patenting

1. Claims 1-23 are rejected for the reasons set forth in the prior office action (paper no. 9) and herein incorporated by reference.

Claim Objections

2. Claims 1-22 are objected to for failing to comply with 37 CFR 1.75 (e). Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 20-22 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 20-22 disclose a gambling device that displays symbols in a diamond-shaped pattern and an n-sided closed figure, each side of the diamond-shaped pattern and an n-sided closed figure forms a pay line, each pay line has one or more interior symbols and two corner symbols, the corner symbols are common to adjacent pay line, a player can exchange symbols from one pay line to another pay line within the diamond-shaped pattern and an n-sided closed figure and exchanging symbols from one pay line to another. The examiner requests the applicant to point out in the specification the claimed subject matter.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 4 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 4 and 15, the phrase “the corner cards can be exchange” is vague and indefinite because the language noted hereinabove only indicates the possibilities that the corner cards can be exchanged.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-6, 8-15, and 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moody '448 in view of Wood '587.

9. Moody discloses a poker game having cards (symbols) represented in a four sided diamond shape (column 6, lines 59-63), each side has five card, three interior cards (player's initial three cards) and two corner cards (community cards) which are shared with two adjacent hands as recited in claims 1, 10, 17, and 19-20; the three cards each hand are dealt face up/down and the corner cards are dealt face up/down as recited in claims 2-3, 11-12, and 18. Moody does not expressly disclose exchanging cards (symbols) from one hand to another hand (or pay line to pay line) and the results are compared to a pay table as recited in claims 1, 10, 17, 19-20, and 22; the corner cards can be exchanged as recited in claims 4, 15 and 21; a center card (community card) is dealt that can be exchanged with one of the corner cards as recited in claims 6, 13, and 14.

Wood teaches a poker game having the capability of exchanging cards (symbols) from one hand to another hand and the results are compared to a pay table (summary). By having the ability of exchanging cards, one of ordinary skill in the art would be able to obtain a winning outcome. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention was made to modify Moody to include exchanging cards from one hand to another hand and the results are compared to a pay table as taught by Wood. To do so would provide game players with the option to obtain at least one winning outcome or to better their outcome(s) for the hands.

Regarding claims 1, 5, 8-10, and 20, the particular shape used is a matter of design choice, wherein no stated problem is solved, or unexpected result obtained, by using the specific shape claimed versus the shape taught by the prior art.

10. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moody '448 in view of Wood '587 as applied to claim 1 above, and further in view of Garrod '373.

11. Moody in view of Wood discloses the claimed invention as discussed above except for a card designated to be a wild card.

Garrod teaches a card being a wild card (summary). By having a wild card, one of ordinary skill in the art would be able to provide game players with the opportunity for an increased payout. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention was made to modify Moody/Wood to include a wild card as taught by Garrod. To do so would allow game players for a chance at an increased outcome.

12. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moody '448 in view of Wood '587 as applied to claim 10 above, and further in view of Wächtler '208.

13. Moody in view of Wood discloses the claimed invention as discussed above except for the player paying for each card exchange.

Wächtler teaches the method of paying for each card exchanged. By paying for each card exchange, one of ordinary skill in the art would be able to provide game players with the opportunity to increase the chance of a bigger payout outcome. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Moody/Wood to include paying for each card exchange as taught by Wächtler. To do so would be able to provide an opportunity for a guaranteed payout outcome.

Response to Arguments

14. Applicant's arguments with respect to claims 1-22 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Merlino '993, Neal '005, Aramapakul '430, Sklansky '025 and '068, all disclose different forms of community type cards for a chance at a better poker of a poker type game.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alex P. Rada whose telephone number is 703-308-7135. The examiner can normally be reached on Monday - Friday, 08:00-16:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on 703-308-1806. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

AP
apr
April 30, 2003


S. THOMAS HUGHES
SUPERVISORY PATENT EXAMINER
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